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IN THE SUPREME COURT OF THE UNITED STATES

No. 84-1716

OCTOBER TERM, 1984

OWEN WILSON, et al, on behalf of themselves and all others similarly situated,

Petitioners

v.

NORTH CAROLINA MUTUAL LIFE INSURANCE COMPANY OF DURHAM, et al

Respondents

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

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REPLY BRIEF FOR PETITIONERS

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1984

ANSWERS TO QUESTIONS RAISED BY RESPONDENTS

1. The issues raised by the Maryland Insurance Commissioner were never litigated in Maryland State Courts. There was simply a dismissal for filing appeal out of time.

2. Petitioners have standing to sue. All assets of their parent company were taken which included controling stock in subsidiaries. The 100% horizontal merger effectively virtually eliminated a special kind of competition. Interlocking officers and directors were installed in subsidiaries. They received nothing for their interests. They were damaged in their business and property interests through this antitrust action. Their status changed to insureds.

3. The complete merger, preferred to be termed "reinsurance" by respondents, is not exempt from federal antitrust laws owing to the principle of "business of insurance" and "business of insurance companies" as interpreted by this Court.

TABLE OF CONTENTS

	Page No.
Answers to questions raised by respondents	1
Table of contents	a
Table of authorities	b
Reply to counterstatement of the case	2
Standing	6
McCarran-Ferguson Act	10
Certificate of service	14

TABLE OF AUTHORITIES

Cases:	Page
Allen v. Wright 104 S. Ct. 3315	9
Asso. of Data Processing Serv. O., Inc. v. Camp 90 S. Ct. 827	9
Bates & Guild Co. v. Payne 24 S. Ct. 595	6
Brotherhood & Union Tr. Emp. v. Madden 147 F2, 439	6
Citizens Com. for Hud. Val. v. Volpe 425 F2, 97, cert. denied	6
Dist. of Col. v. Pace 64 S. Ct. 406	6
Flast v. Cohen 88 S. Ct. 1942	6
Group Life & Health Ins. Co. v. Royal Drug Co. 99 S. Ct. 1075	10
Larson v. Valente 102 S. Ct. 1673	10
Peters v. Hobby 75 S. Ct. 790	5
Reibert v. Atlantic Rich. Co. 471 F2, 727	13

Page

Stark v. Wichard 64 S. Ct. 559 5

Statutes:

Sherman Antitrust Act

15 U.S.C. 1-2 11

Clayton Act Amendment

15 U.S.C. 7-8 13

Celler-Kefauver Act Amendment

15 U.S.C. 18 9

McCarran-Ferguson Act Amendment

15 U.S.C. 1011-1013 10

Miscellaneous:

United States House of Representatives, Judiciary Committee, Peter Rodino, Chairman 12

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RELATED ISSUES AND FACTS INCLUDED

In the original petition were primarily included only facts and principles of law in this case that were important nationally, far reaching in need of resolution and possibly only resolvable by this Court. Some added background to the case is included on issues raised by respondents.

REPLY TO COUNTERSTATEMENT OF THE CASE

In deference to the rule for brevity, petitioners did not attempt to restate in their petition details of the State action taken in this case through the Maryland Insurance Commissioner. Most of this information is included in the court record. A full review would be undertaken on grant of certiorari.

For what ever reason the Maryland Insurance Commissioner chose to carefully ignor all negative factors of law and facts that might tend to negate the approval of the acquisition of the Maryland parent insurance company. A brief outline of mistakes of law and facts follows:

1. Exceeded delegated authority, Maryland Legislature.

2. Attempted to rule on federal questions involving interstate action.

3. Attempted to compare life, health and hospital insurance company giants with

business done by acquired company, its subsidiary and Southern Life Insurance Company of Baltimore City. Not one of the larger companies operating in the market area offers the kind of insurance that was eliminated on the merger action viz: premiums as low as 25¢ monthly for life, health or hospitalization coverage.

4. In order to partially comply with a statutory rule of law, insisted that the complete merger was really not a merger but simply reinsurance.

5. Stated that over 2/3's of certificate holders of acquired parent company voted for the merger/reinsurance, as required by State law, when in fact less than 1/12th voted on their own, while the Secretary of the company, with proper proxies, did vote for over 2/3's of the company's policyholders against the merger, but to no avail.

6. Stated acquired company was in financial difficulty when its highly profitable subsidiary in Washington, D.C. eliminated any

loss possibility. One simple 'phone call to switch securities by the then president, who promoted the entire deal to obtain a substantial payment from the acquiring group personally, could have made the subsidiary profits an unnecessary addition.

7. Failed to use uniform bond portfolio valuation methods for acquired and acquiring company. Use of current true cash realizable value would have shown acquiring company with impaired surplus and acquired company with substantial surplus funds.

8. Denied consideration of a legally approved reserve valuation method to acquired company that would have increased further its very adequate surplus.

9. Claimed acquisition by a foreign company was to the best interest of policyholders when in fact certificate holders of acquired company and minority stock holders of subsidiary company recived nothing for their interest in their companies. No share of surplus, premium renewals and special

reserves built up after over seventy years of operation, or any other benefits and credits owners of a going established business normally receive on take over or merger. The only thing received was a negative surplus in a new company when the bond portfolio was valued as in their company. They did not receive new contracts of insurance. Their company was eliminated totally.

10. Took over Southern Life which was a part of the total acquisition plan of the acquirers. Refused to make corrections to statutory reserves causing the company to show an impaired capital account.

There are many cases denying authority to administrative agents where their action is, capicious abuse of discretion, arbitrary or was otherwise not in accordance with the law. Peters v. Hobby, 75 S. Ct. 790. Stark v. Wichard, 64 S. Ct. 559.

The Maryland Insurance Commissioner's review authority of merger/reinsurance proposals is very limited by State law.

Since he so clearly exceeded his local authority and had no federal authority, it would indicate that his findings were invalid and void unconstitutionally as arbitrary and discriminatory even without consideration of all errors and omissions noted above. Brotherhood & Union of Transit Emp. v. Madden 147 F2, 439.

By the "clearly erroneous" rule the Court will set aside a determination of fact which it adjudged to be clearly wrong. District of Col. v. Pace 64 S. Ct. 406; Bates & Guild Co. v. Payne 24 S. Ct. 595. An administrative order of decision may be vacated or set aside where there is an error of law, where statutory authority is exceeded. Citizens Com. for Hud. Val. v. Tolpe 425 F2, 97, cert. denied.

STANDING

This Court held in Flast v. Cohen 88 S. Ct. 1942, that standing is an aspect of justiciability. The fundamental aspect of standing is that it focuses on the party seeking

to get his complaint before a federal court and not the issues he wishes to have adjudicated.

The certificate holders of acquired company and minority stockholders of its subsidiary received absolutely nothing for their ownership interest on the 100% merger. Theirs was a promise implied since they did not receive new contracts from the acquiring company showing that their claims would be paid when presented some time in the future. Their interests in millions of dollars in sound net assets were fully eliminated through antitrust action.

The argument has been advanced that the acquired company itself must sue for damages as a result of monopolistic action rather than the owners, certificate holders and beneficiaries, who were all one and the same. They are the insured public standing on their own after the complete take over. Within three months after signing the contract merging the parent company, foreign corporation control

officers surrendered the certificate of authority. There was nothing remaining of the acquired parent company that could sue anyone on its own account, as a going life company

Hostile control officers moved into official positions of the subsidiary and the wholly owned holding company that was included in the assets of the acquired parent company. All certificate holders were no longer owners. Their company had been eliminated, they had become insureds only. Even respondents argument denying employees and owners the right to sue is inapplicable on consideration of these facts.

All parties suffered serious losses as a direct result of the merger activities. Their market source for added personal insurance of the same type already owned and originally available had been eliminated.

Respondents specifically point out petitioner, Owen Wilson as seeking separate damages. He too was no longer an officer, director, simply a beneficiary who had been

severely damaged by the antitrust action of respondent.

The end result of merger action was:

Company	Acquired
Parent acquired company Mutual Benefit Soc. (MBS)	100% all assets
Wholly owned subsidiary MidWest Underwriters Inc.	100% all stock
Subsidiary, Wash. D. C. American Citizens Life	90%+ stock
Allied company Southern Life of Baltimore	50% + stock

All insurance companies were direct horizontal competitors in the same market area as acquiring company. Considered in direct violation of the Sherman Act as amended by the Clayton Act and Celler-Kefauver Act.

This Court has held interest confering standing to sue may reflect aesthetic conservational, recreational or spiritual values as well as economic values. Asso. of Data Processing Service O., Inc. v. Camp 90 S.Ct. 827 and Allen v. Wright 104 S. Ct 3515. Also, "Personal stake" requirement for standing must consist of distinct palpable injury

to plaintiff and fairly traceable causual connection between claimed injury and challenged conduct. Larson v. Valente 102 S. Ct. 1673

McCARRAN-FERGUSON ACT

Petitioners had no intention to omit any points considered important in this case, however, in review of facts, pleadings and other considerations the McCarran appears to be a most important aspect to them and to the general question as it now stands with regard to the serious continued massive esculation in health insurance costs and related fields. Certainly there is an analogy existing there as developed in the original petition.

Respondents insist that consideration of the McCarran presents "no issue worth of this Court's review - ." Petitioners disagree. Health costs have exploded within the nation. The McCarran Act has made the field virtually free from effective competition until recently by this Courts action in Group Life and Health Ins. Co. v. Royal Drug Co. 99 S. Ct. 1075. Petitioners basically

consider this case their authority for elimination of the McCarran Act exemption from the Sherman Antitrust Act as amended so far as their case is concerned. They also consider their action closely akin to the effect this concept has to the nationwide monopoly existing for many years, guaranteed by the McCarran as applied to the Blue Cross and Blue Shield giants in the industry.

Since any meaningful change in the status of health entitlement can result in billions of dollars to the national budget, modification in the effect of the McCarran can be profound to the national Government.

Though petitioners believe that their case is free of the exemption and that the lower court erred in denying relief.a review of the current effect of the exemption could be of national importance to thousands of individuals and companies. This is expecially true now that it seems to appear that there may by no repeal or modification of the exemption in the very near future.

Dispite five recent hearings by the House Judiciary Committee, chairman, Peter Rodino (D. N.J.), in an effort to infrom legislators on the nature of the insurance industry, insurance company lobbyist are fearful of centralized government control if McCarran is repealed. It was pointed out that the market share of the largest insurance company is smaller than in other industries. The repeal of the Act would assist in health and accident insurance cost borne by the Federal Government. Without legislation effectively taking control in the near future the system in place throughout the nation will undoubtedly continue the upward spiral of costs. The only answer seems to be at the judicial level at this time.

Control of the McCarran-Ferguson Act amendment is a multibillion dollar question that applied in the right way can save thousands of lives and medical injuries through experience recounted in original petition.

The Clayton Act Amendment provides, among other things that "Any person who shall be injured in his business or property by anything forbidden in the antitrust laws, may sue therefore - - and shall recover three-fold the damages by him sustained. Reibert v. Atlantic Richfield Co. 471 F2, 727.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the aforegoing Petitioner's Reply Brief has been mailed, postpaid, this 10th day of JUNE 1985, to the following attorneys:

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